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Attorney for Defendants:
 XYRIS ENTERPRISE, INC;
 ATKINSON CARE HOME;
 MUQUET DADABHOY;
 TERESITA CASTANEDA

UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

EDGARDO SEMINIANO)

Plaintiff,)

vs.)

XYRIS ENTERPRISE, INC;
 ATKINSON CARE HOME;
 MUQUET DADABHOY;
 TERESITA CASTANEDA,

Defendants)

CASE NO.: CV10 1673 PSG (JEMx)

**DEFENDANTS' SEPARATE
 STATEMENT OF DISPUTED AND
 UNDISPUTED FACTS IN OPPOSITION
 TO PLAINTIFF'S MOTION FOR
 SUMMARY JUDGMENT**

Date: Jan 03, 2011

Time: 11:00 a.m.

Department: 10A

Judge: Honorable J. Tucker

DEFENDANTS hereby respectfully submit this statement of disputed and undisputed facts in opposition to Plaintiff's motion for summary judgment.

<u>PURPORTEDLY UNDISPUTED FACTS</u>	<u>EVIDENTIARY SUPPORT</u>
1. Xyris Enterprise, Inc. was a joint employer of Edgardo Seminiano between July 29, 2008, and December 2, 2009.	UNDISPUTED

<u>PURPORTEDLY UNDISPUTED FACTS</u>	<u>EVIDENTIARY SUPPORT</u>
2. Atkinson Care Home was a joint employer of Edgardo Seminiano between July 29, 2008, and December 2, 2009.	UNDISPUTED
3. Muquet Dadabhoy was a joint employer of Edgardo Seminiano between July 29, 2008, and December 2, 2009.	UNDISPUTED
4. Teresita Castaneda was a joint employer of Edgardo Seminiano between July 29, 2008, and December 2, 2009.	UNDISPUTED
5. Between July 29, 2008, and December 2, 2009, Plaintiff worked as a caregiver at Atkinson Care Home.	UNDISPUTED
6. Between July 29, 2008, and December 2, 2009, Atkinson Care Home was a licensed residential care facility for the elderly located at 17035 Atkinson Avenue, Torrance, CA 90504.	UNDISPUTED
7. Between July 29, 2008, and December 2, 2009, Defendants Muquet Dadabhoy and Teresita Castaneda were the licensees of the Atkinson Care Home.	UNDISPUTED
8. Between July 29, 2008, and December 2, 2009, Defendants Muquet Dadabhoy and Teresita Castaneda jointly operated the Atkinson Care Home as partners.	UNDISPUTED

<u>PURPORTEDLY UNDISPUTED FACTS</u>	<u>EVIDENTIARY SUPPORT</u>
<p>9. Between July 29, 2008, and December 2, 2009, Defendants Muquet Dadabhoy and Teresita Castaneda were required to operated the Atkinson Care Home 24 hours per day, 7 days per week.</p>	UNDISPUTED
<p>10. Between July 29, 2008, and December 2, 2009, Plaintiff Edgardo Seminiano was required by Defendants Muquet Dadabhoy and Teresita Castaneda to request permission to leave Atkinson Care Home.</p>	DISPUTED (DECLARATION OF MUQUET DADABHOY; EXHIBITS C & D)
<p>11. Plaintiff Edgardo Seminiano was never unconditionally allowed to leave Atkinson Care Home more than 57 hours in any week between July 29, 2008, and December 2, 2009.</p>	DISPUTED (DECLARATION OF MUQUET DADABHOY; EXHIBITS C & D)
<p>12. Plaintiff's hours worked each week between July 29, 2008, and December 2, 2009, were 111 or more.</p>	DISPUTED (DECLARATION OF MUQUET DADABHOY; EXHIBITS C & D)
<p>13. Edgardo Seminiano did not have private living quarters while working at Atkinson Care Home.</p>	DISPUTED (DECLARATION OF MUQUET DADABHOY)
<p>14. Between July 29, 2008, and December 2, 2009, Edgardo Seminiano slept on a couch at Atkinson Care Home.</p>	DISPUTED (DECLARATION OF MUQUET DADABHOY)

<u>PURPORTEDLY UNDISPUTED FACTS</u>	<u>EVIDENTIARY SUPPORT</u>
15. Xyris Enterprise, Inc. owes Edgardo Seminiano \$53,649.18 in unpaid minimum wage and overtime compensation under the Fair Labor Standards Act.	DISPUTED (DECLARATION OF MUQUET DADABHOY; EXHIBITS B-D)
16. Atkinson Care Home owes Edgardo Seminiano \$53,649.18 in unpaid minimum wage and overtime compensation under the Fair Labor Standards Act.	DISPUTED (DECLARATION OF MUQUET DADABHOY; EXHIBITS B-D)
17. Defendant Muquet Dadabhoy owes Edgardo Seminiano \$53,649.18 in unpaid minimum wage and overtime compensation under the Fair Labor Standards Act.	DISPUTED (DECLARATION OF MUQUET DADABHOY; EXHIBITS B-D)
18. Defendant Teresita Castaneda owes Edgardo Seminiano \$53,649.18 in unpaid minimum wage and overtime compensation under the Fair Labor Standards Act.	DISPUTED (DECLARATION OF MUQUET DADABHOY; EXHIBITS B-D)
19. Xyris Enterprise, Inc. owes Edgardo Seminiano \$53,649.18 liquidated damages under the Fair Labor Standards Act.	DISPUTED (DECLARATION OF MUQUET DADABHOY; EXHIBITS B-D)
20. Atkinson Care Home owes Edgardo Seminiano \$53,649.18 liquidated damages under the Fair Labor Standards Act.	DISPUTED (DECLARATION OF MUQUET DADABHOY; EXHIBITS B-D)

<u>PURPORTEDLY UNDISPUTED FACTS</u>	<u>EVIDENTIARY SUPPORT</u>
21. Muquet Dadabhoy owes Edgardo Seminiano \$53,649.18 liquidated damages under the Fair Labor Standards Act.	DISPUTED (DECLARATION OF MUQUET DADABHOY; EXHIBITS B-D)
22. Teresita Castaneda owes Edgardo Seminiano \$53,649.18 liquidated damages under the Fair Labor Standards Act.	DISPUTED (DECLARATION OF MUQUET DADABHOY; EXHIBITS B-D)
23. Xyris Enterprises, Inc. owes Edgardo Seminiano \$121,855.42 in unpaid overtime Compensation under California law.	DISPUTED (DECLARATION OF MUQUET DADABHOY; EXHIBITS B-D)
24. Atkinson Care Home owes Edgardo Seminiano \$121,855.42 in unpaid overtime Compensation under California law.	DISPUTED (DECLARATION OF MUQUET DADABHOY; EXHIBITS B-D)
25. Muquet Dadabhoy owes Edgardo Seminiano \$121,855.42 in unpaid overtime Compensation under California law.	DISPUTED (DECLARATION OF MUQUET DADABHOY; EXHIBITS B-D)
26. Teresita Castaneda owes Edgardo Seminiano \$121,855.42 in unpaid overtime Compensation under California law.	DISPUTED (DECLARATION OF MUQUET DADABHOY; EXHIBITS B-D)
27. Xyris Enterprises, Inc. owes Edgardo Seminiano \$4,749.36 in compensation for meal period not received pursuant to California Labor Code Section 226.7.	DISPUTED (DECLARATION OF MUQUET DADABHOY; EXHIBITS B-D)

PURPORTEDLY UNDISPUTED FACTS	EVIDENTIARY SUPPORT
28. Atkinson Care Home owes Edgardo Seminiano \$4,749.36 in compensation for meal period not received pursuant to California Labor Code Section 226.7.	DISPUTED (DECLARATION OF MUQUET DADABHOY; EXHIBITS B-D)
29. Muquet Dadabhoy owes Edgardo Seminiano \$4,749.36 in compensation for meal period not received pursuant to California Labor Code Section 226.7.	DISPUTED (DECLARATION OF MUQUET DADABHOY; EXHIBITS B-D)
30. Teresita Castaneda owes Edgardo Seminiano \$4,749.36 in compensation for meal period not received pursuant to California Labor Code Section 226.7.	DISPUTED (DECLARATION OF MUQUET DADABHOY; EXHIBITS B-D)
31. Xyris Enterprise, Inc. owes Edgardo Seminiano \$2,467.20 for continuing wages pursuant to California Labor Code Section 203.	DISPUTED (DECLARATION OF MUQUET DADABHOY; EXHIBITS B-D)
32. Atkinson Care Home owes Edgardo Seminiano \$2,467.20 for continuing wages pursuant to California Labor Code Section 203.	DISPUTED (DECLARATION OF MUQUET DADABHOY; EXHIBITS B-D)
33. Muquet Dadabhoy owes Edgardo Seminiano \$2,467.20 for continuing wages pursuant to California Labor Code Section 203.	DISPUTED (DECLARATION OF MUQUET DADABHOY; EXHIBITS B-D)
34. Teresita Castaneda owes Edgardo Seminiano \$2,467.20 for continuing wages pursuant to California Labor Code Section 203.	DISPUTED (DECLARATION OF MUQUET DADABHOY; EXHIBITS B-D)

<u>PURPORTEDLY UNDISPUTED FACTS</u>	<u>EVIDENTIARY SUPPORT</u>
35. Xyris Enterprise, Inc. owes Edgardo Seminiano \$4000.00 for failure to comply with California Labor Code Section 226.	DISPUTED (DECLARATION OF MUQUET DADABHOY; EXHIBITS B-D)
36. Atkinson care Home owes Edgardo Seminiano \$4000.00 for failure to comply with California Labor Code Section 226.	DISPUTED (DECLARATION OF MUQUET DADABHOY; EXHIBITS B-D)
37. Muquet Dadabhoy owes Edgardo Seminiano \$4000.00 for failure to comply with California Labor Code Section 226.	DISPUTED (DECLARATION OF MUQUET DADABHOY; EXHIBITS B-D)
38. Teresita Castaneda owes Edgardo Seminiano \$4000.00 for failure to comply with California Labor Code Section 226.	DISPUTED (DECLARATION OF MUQUET DADABHOY; EXHIBITS B-D)

Plaintiff's list of undisputed facts contains numerous disputed, and thus triable, facts.

DEFENDANTS' SEPARATE STATEMENT OF DISPUTED AND UNDISPUTED FACTS

1. Between July 29, 2008, and December 2, 2009, Edgardo Seminiano worked as a caregiver at Atkinson Care Home.	(DECLARATION OF MUQUET DADABHOY; EXHIBITS B-D)
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2.	Between July 29, 2008, and December 2, 2009, Edgardo Seminiano also lived at the Atkinson Care Home, where he worked.	(DECLARATION OF MUQUET DADABHOY; EXHIBITS B-D)
3.	Although Atkinson Care Home was legally obligated to operate for 24 hours per day, 7 days per week, Edgardo Seminiano was only employed to work 40-hours per week, and only required to stay on the premises for those hours.	(DECLARATION OF MUQUET DADABHOY; EXHIBITS B-D)
4.	Plaintiff only remained on the premises of Atkinson Care Home beyond work hours for non-work-related reasons because that is where he was housed and had access to food.	(DECLARATION OF MUQUET DADABHOY; EXHIBITS B-D)
5.	Edgardo Seminiano was away from Atkinson Care Home regularly and frequently for non-work related, personal reasons.	(DECLARATION OF MUQUET DADABHOY; EXHIBITS B-D)
6.	At the beginning of the work relationship, Atkinson Care Home agreed to provide for Edgardo Seminiano's housing and living expenses to save traveling time and cost, along with \$1800 per month as salary paid in check or cash.	(DECLARATION OF MUQUET DADABHOY; EXHIBITS B-D)
7.	Edgardo Seminiano received living accommodations, was paid \$1800 each month by check and cash, and received additional amounts of cash.	(DECLARATION OF MUQUET DADABHOY; EXHIBITS B-D)

1 8. Edgardo Seminiano contacted
2 Muquet Dadabhoy to negotiate an out-
3 of-court settlement of the matter and
4 has settled the matter with Defendants
5 for \$12,000.

(DECLARATION OF MUQUET
DADABHOY)

6 DATED: December 7, 2010

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9 AMY GHOSH

10 Amy Ghosh, Attorney for Defendants
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